

California Institution for Women (CIW)

16756 Chino-Corona Road
Corona, CA 92880
(909) 597-1771

**NOTICE OF ADVERSE ACTION**

Name of Employee: Tony Garcia
Civil Service Classification: Correctional Officer
Department: Corrections and Rehabilitation
Work Location: California Institution for Women
16756 Chino-Corona Road
Corona, CA 92880

TO: CORRECTIONAL OFFICER TONY GARCIA

Please note that the subject is a Correctional Peace Officer and his/her home address must be kept confidential. (Penal Code Section 146e(a).)

You are hereby notified that, pursuant to Government Code §19574, adverse action is being taken against you as follows:

I
STATEMENT OF THE NATURE OF THE ADVERSE ACTION

You are hereby notified you shall be dismissed from your position as a Correctional Officer with the California Department of Corrections and Rehabilitation (CDCR).

II
EFFECTIVE DATE OF THIS ADVERSE ACTION

This dismissal shall be effective at the close of business on January 29, 2018.

III
STATEMENT OF CAUSES

This adverse action is being taken against you for the causes set forth in the following subsections of Government Code §19572:

[Redacted]

(I) Immorality

[Redacted]

The facts which underlie the legal causes for this adverse action are set forth with more particularity herein, below.

GOVERNING POLICIES

In accordance with the State Personnel Board (SPB) requirements set forth in Leah Korman (1991) SPB Precedential Decision Number 91-04, and Steven L. Kinoshita (1998) SPB Decision Number 98-05, you are hereby placed on notice that your acts of misconduct were in violation of the following rules, policies, procedures, statutes, or other requirements or standards provided for by law:

Your actions violated the following sections of the California Code of Regulations (CCR):

VIOLATION OF DEPARTMENTAL / INSTITUTIONAL POLICIES

TITLE 2, §172, General Qualifications, which states in pertinent part:

All candidates for, appointees to, and employees in state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the minimum qualifications of each class specification.

TITLE 15, 3006, Contraband, which states in pertinent part:

Inmates may possess only the personal property, materials, supplies, items, commodities and substances, up to the maximum amount, received or obtained from authorized sources, as permitted in these regulations. Possession of contraband as defined in section 3000 may result in disciplinary action and confiscation of the contraband.

(a) Dangerous Property. Inmates may not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, destructive devices, or cellular telephones or wireless communication devices capable of making or receiving wireless communications.

TITLE 15, §3312, Disciplinary Methods, which states in pertinent part:

(a) Inmate misconduct shall be handled by:
(3) Rules Violation Report. When misconduct is believed to be a violation of law or is not minor in nature, it shall be reported on a CDC Form 115 (Rev. 7/88), Rules Violation Report.

TITLE 15, §3315, Serious Rule Violations, which states in pertinent part:

(a) Inmate misconduct reported on a CDC Form 115 shall be classified serious if:

(1) It is a serious disciplinary offense not specified as administrative in section 3314(a) (3), an offense punishable as a misdemeanor, whether or not prosecution is undertaken, or is a felony, whether or not prosecution is undertaken.

(2) It involves any one or more of the following circumstances:

(B) A breach of or hazard to facility security.

(D) The introduction, distribution, possession, or use of controlled substances, alcohol, or dangerous contraband.

TITLE 15, §3391, Employee Conduct, which states in pertinent part:

Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Irresponsible or unethical conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

TITLE 15, §3395, Alertness, which states:

Employee must not sleep or be less than alert and in full possession of all faculties while on duty.

TITLE 15, §3400, Familiarity, which states:

Employees must not engage in undue familiarity with inmates, parolees, or the family and friend of inmates or parolees. Whenever there is a reason for an employee to have personal contact or discussions with an inmate or parolee or the family and friends of inmates and parolees, the employee must maintain a helpful but professional attitude and demeanor. Employees must not discuss their personal affairs with any inmate or parolee.

TITLE 15, §3401, Employee and Inmate/Parolee Relations, which states:

(a) Except as provided in (e) below, employee shall not take, deliver or otherwise transmit, either to or from any inmate or member for an inmate's family; any verbal or written message, document, item, article or substance.

(b) Except as provided in (e) below, employee shall not contact, correspond or otherwise communicate with any inmate, parolee or member of an inmate's or parolee's family.

(c) If an employee is contacted by any inmate, parolee or member of an inmate's family, other than under circumstances specified in (e) below, the employee shall immediately notify, in writing, the employee's institution head or director/assistant secretary of that fact.

(d) Any employee asked, coerced or otherwise contacted by any person to transmit, take or relay any message, item or substance, either to or from, any inmate, parolee or member of an inmate's or parolee's family, by other than approved means or circumstances, shall immediately notify, in writing, their institution head or director/assistant secretary of that fact.

(e) Exceptions to the above prohibitions are as follows:

- (1) In the execution of their assigned duties, employees shall issue, or receive from inmates any mail, packages, supplies and other items due or permitted them according to department policy and local procedures.
- (2) In the execution of their assigned duties, employees shall interact with any inmate, parolee or member of an inmate's or parolee's family as necessary.
- (3) While off-duty, and only in accordance with this regulation, departmental employees may conduct relationships with any inmate, parolee or member of an inmate's or parolee's family who is either the employee's immediate family member, as defined in Section 3000, or the employee's aunt, uncle, niece, nephew, or first cousin.

TITLE 15, §3401.5, Employee Sexual Misconduct, which states:

- (a) For the purposes of this section, sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the CDCR, which involves or is directed toward an inmate or parolee. The legal concept of "consent" does not exist between departmental staff and inmates/parolee; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct includes, but is not limited to:
 - (1) Influencing or offering to influence an inmate's/parolee's safety, custody, housing, privileges, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or
 - (2) Threatening an inmate's/parolee's safety, custody, housing, privileges, work detail, parole conditions or programming because the inmate/parolee has refused to engaged in sexual act(s) or contact, including:
 - (3) Engaging in sexual acts(s) or contact, including:
 - (A) Sexual intercourse; or
 - (B) Sodomy; or
 - (C) Oral Copulation; or
 - (D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratifications, or manipulation; or
 - (E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with knowledge of another, for the purpose of sexual arousal, gratification, or manipulation; or
 - (F) Invasion of privacy, beyond that reasonably necessary to maintain safety and security; or disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of an inmate/parolee.
 - (4) Display by staff, in the presence of an inmate, of the staff person's uncovered genitalia, buttocks, or breast;
 - (5) Voyeurism by a staff person including volunteers or independent contractors. Voyeurism is defined as an invasion of privacy of an offender by staff for reasons unrelated to official duties.

- (b) **Penalties.** All allegations of sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/or criminal prosecution.
- (c) **Reporting Requirements.** Any employee who observes, or who receives information from any source concerning sexual misconduct, shall immediately report the information or incident directly to the institution head, unit supervisor, or highest-ranking official on duty, who shall then immediately notify the OIA. Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action.
- (d) **Confidentiality.** Alleged victims who report criminal sexual misconduct falling into one of the Penal Code (PC) section set forth in Government Code 6254(f)(2) shall be advised that their identity may be kept confidential pursuant to Penal Code Section 293.5, upon their request.
- (e) **Retaliation Against Employees.** Retaliatory measures against employees who report incidents of sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, unwarranted denials of promotions, merit salary increases, training opportunities, or requested transfers; involuntary transfer to another location/position as a means of punishment; or unsubstantiated poor performance reports.
- (f) **Retaliation Against Inmates/Parolees.** Retaliatory measures against inmates/parolees who report incidents of sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an inmate/parolee from reporting sexual misconduct.
- (g) **Protection Measures.** Multiple protection measures shall be considered to protect inmate victims who report staff sexual misconduct or cooperate with staff sexual misconduct investigations including but not limited to housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting staff sexual misconduct or sexual harassment or for cooperating with investigations.

Your actions violated the following sections of the Department Operations Manual (DOM):

§31140.5, Employee Expectations and Reporting, which states:

Each employee, regardless of classification or rank, shall adhere to the Department's Employee Performance Standards as defined in DOM, Section 3, Article 22, Subsection 33030.3. Each employee shall report misconduct or any unethical or illegal activity in a timely manner. Failure to report employee misconduct or any unethical or illegal activity in an investigation or allegation inquiry shall be grounds for corrective action, disciplinary action, or both. Employees shall not make false statements when questioned, interviewed, or in reports submitted.

§31140.5.1, Employee Duty to Cooperate, which states in pertinent part:

Each employee of the CDCR is required to comply and cooperate as follows:

- If requested to make a statement in any official internal investigation conducted by the Department, employees shall make full, complete, and truthful statements. Failure or refusal to make statements or making false statements during Department Internal Affairs investigations may result in disciplinary action.
- Employees shall not take any action which would interfere with, delay, distort, or unduly influence any official investigation conducted by the Department or any other government agency. Any employee who knowingly gives false evidence, withholds evidence, or interferes in any way during such an investigation, or requests or encourages another to do so, may be subject to disciplinary action.
- Employees have a duty to cooperate with investigators of the Department and with officials from other law enforcement agencies who are conducting a criminal investigation. Employees shall make full, complete, and truthful statements. Failure to cooperate may result in disciplinary action.

§33030.3.1, Code of Conduct, which states:

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;
- Comply with all applicable laws and regulations;
- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.

§33030.3.2, General Qualifications, which states:

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), Title 2, Section 172, General Qualifications, which states in pertinent part:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

§33030.3.3, Law Enforcement Code of Ethics, which states on pertinent part:

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics states, in pertinent part:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property;...

I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I WILL... develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department. ... I will ...cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession...law enforcement.

Policy, §54040.1, Policy, which states in pertinent part:

The California Department of Corrections and Rehabilitation (CDCR) is committed to providing a safe, humane, secure environment, free from sexual misconduct. This will be accomplished by maintaining a program to address education/prevention, detection, response, investigation, and tracking of sexual misconduct and to address successful community re-entry of the victim. CDCR shall maintain a zero tolerance for sexual misconduct in its institutions, community correctional facilities, conservation camps, and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited. This policy applies to all offenders and persons employed by the CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole.

§54040.2 Purpose, which states:

The purpose of this policy is to ensure compliance with Public Law 108-79, the Prison Rape Elimination Act of 2003, and California Assembly Bill 550 (Chapter 303, Statutes of 2005), the Sexual Abuse in Detention Elimination Act. It will provide guidelines for the prevention, detection, response, investigation, and tracking of offender sexual assaults and sexual misconduct between offenders and/or staff and offenders. A further purpose of this policy is to provide guidelines for the successful community re-entry of sexual assault/misconduct victims.

Lastly, this policy informs staff of their responsibility and liability as specified in the law.

§54040.3 Definitions, which states in pertinent part:

Offender:

Any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR.

Sexual Misconduct:

Any threatened, coerced, attempted, or completed sexual contact, assault or battery between staff and offenders.

Any sexual misconduct by staff directed toward an offender as defined in California Code of Regulations (CCR, Title 15, Section 3401.5 and Penal Code (PC) Section 289.6. The legal concept of "consent" does not exist between staff and offenders; any sexual behavior between them constitutes sexual misconduct and shall subject the staff member to disciplinary action and/or to prosecution under the law.

Staff:

Any person employed by the CDCR, including employees, volunteers, and independent contractors assigned to an institution, community correctional facility, conservation camp, parole, or headquarters. Employee refers to those individuals who are appointed through civil services employment laws and assigned to a CDCR institution.

IV
STATEMENT OF FACTS

A.

You have been employed with the Department from on or about November 15, 2009, to the present. You are currently employed at the California Institution for Women (CIW), as a Correctional Officer and were so employed during all relevant dates herein. You are fully aware of your responsibility to obey all laws, and to follow the policies and procedures of the Institution, as well as the rules and regulations of the Department. You are fully aware of your responsibility to act courteously, professionally and ethically in your dealings with staff, inmates and parolees, other agencies, and the public. As a sworn Peace Officer, you are held to a higher standard of conduct, on and off duty, and you are fully aware of this fact.

B.

1. On or about May 26, 2017, Inmate [REDACTED] performed oral sex on you while you were on-duty at CIW. Inmate Daniella Garcia, WF3310 told the Office of Internal Affairs (OIA) on or about May 26, 2017, you released Facility A, Harrison Housing Unit, for breakfast and Inmate [REDACTED] stayed back in the unit. When Inmate Garcia returned to the unit, Inmate [REDACTED] told her she had performed oral sex on you. Inmate [REDACTED] said you ejaculated on the night gown she was wearing. Inmate Garcia gave the nightgown to Inmate Lorie Hurd, W99192, for safe-keeping.
2. Riverside/San Bernardino CAL-DNA Laboratory completed a DNA report on the night gown. The laboratory concluded that it is 8.9 nonillion times more likely that the semen DNA on the night gown was from you than from any unknown individual. Non-sperm

3. On November 3, 2017, you were interviewed by the Office of Internal Affairs (OIA). You admitted to OIA that on or about May 26, 2017, you masturbated in a staff restroom at CIW. You admitted you masturbated in Miller A Housing Unit at CIW in the past.
4. During your November 3, 2017 interview with OIA, you admitted that on or between May 26, 2017 and June 15, 2017, Inmate [REDACTED] asked you to bring a cell phone into CIW. You admitted that you failed to report or document the incident.
5. During your November 3, 2017 interview with OIA, you denied engaging in any oral copulation or sexual contact with Inmate [REDACTED]. This was dishonest.
6. On or about April 14, 2017, you were providing security coverage at Kaiser Permanente Medical Center in Ontario, California. Nurse Allison Wade observed you sleeping inside the hospital room of Inmate Christina Carney, WF6277. You were equipped with your safety equipment.

TRAINING

Further, you have taken the following training relevant to the above-mentioned allegations:

TRAINING COURSE	DATES
Ethics and Professionalism	March 9, 2010
Inmate Staff Relations	March 9, 2010
Prison Rape Elimination Act	May 20, 2010
Inmate Staff Relations	January 23, 2015
Inmate Staff Relations	February 3, 2015
Prison Rape Elimination Act	May 11, 2015
Prison Rape Elimination Act	May 13, 2015
Prison Rape Elimination Act	May 11, 2016
Prison Rape Elimination Act	January 24, 2017

V

NOTICE AND PROGRESSIVE DISCIPLINE

None

Right to respond to appointing power

Pursuant to State Personnel Board Rule 52.6 (*Skelly Rule*), you are entitled to at least five (5) working days within which to respond to this proposed notice. You may respond orally or in writing prior to January 29, 2018. If you wish to respond you may do so to:

Shantle Jones, Employee Relations Officer
California Institution for Women
16756 Chino-Corona Road
Corona, CA 92880
(909) 606-4974

Tony Garcia, Correctional Officer

Notice of Adverse Action

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Shantle Jones, Employee Relations Officer
California Institution for Women
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(909) 606-4974

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may sustain, amend, modify, or revoke the adverse action in whole or in part.

Right to Appeal to the State Personnel Board

Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this proposed notice with the State Personnel Board, 801 Capitol Mall, Sacramento, California 95814, not later than thirty (30) calendar days after the effective date of this proposed action. An answer shall be deemed to be a request for hearing or investigation as provided in Section 19575 of the Government Code. If you answer as provided the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the adverse action taken by the appointing power shall become final.

You are responsible for notifying the SPB and your appointing power of any changes in your address that occur after the effective date of this adverse action.

Right to Inspect Documents

Copies of documents or other materials giving rise to this proposed adverse action are attached. This documentation is not provided to the SPB in advance of any appeal hearing that may be scheduled.



M. HILL
Warden
California Institution for Women

cc: Personnel Office
Employee Relations Office